

SUPERFUND MEMORANDUM OF AGREEMENT
BETWEEN THE
WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY
AND THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VIII

I. Purpose

The Wyoming Department of Environmental Quality (DEQ) and Region VIII of the United States Environmental Protection Agency (EPA) enter into this Memorandum of Agreement (MOA) for the purpose of defining and clarifying the roles and responsibilities of DEQ and EPA with respect to contaminated sites that are addressed under Wyoming's Voluntary Remediation of Contaminated Sites law, W.S.35-11-1601 through 35-11-1613, 35-11-1701, 35-11-1801 through 35-11-1803, as enacted March 10, 2000 (the VRCS law).

II. Background

EPA and DEQ enter into this Memorandum of Agreement to protect public health and the environment of communities which may be impacted by a release of hazardous substances from contaminated properties, as well as to provide an opportunity to those communities to benefit through the cleanup and redevelopment of contaminated sites. Both agencies recognize that a key factor to meet these goals is to exercise their authorities and use their resources to assure appropriate site response actions in ways that are mutually complementary and are not duplicative .

EPA has reviewed and evaluated Wyoming's VRCS program. Based on such review, EPA has determined that the Wyoming VRCS program is adequate. Specifically, the Wyoming VRCS program:

1. Provides opportunities for meaningful community involvement.
2. Ensures that voluntary cleanup actions are protective of human health and the environment.
3. Has adequate resources to ensure that voluntary cleanup actions are conducted in an appropriate and timely manner, and that both technical assistance and streamlined procedures, where appropriate, are available from DEQ.

4. Provides mechanisms for the written approval of remedy agreements and a certification indicating that the remedy is complete.
5. Provides adequate oversight to ensure that voluntary cleanup actions are conducted in such a manner to assure protection of human health and the environment.
6. Shows the capability, through enforcement or other authorities, of ensuring completion of response actions if the volunteering parties conducting the response actions fail or refuse to complete the necessary response actions, including operation and maintenance, institutional controls or long term monitoring activities.

EPA and DEQ seek to protect human health and the environment through the investigation and cleanup of potentially contaminated properties under the authority of the Wyoming VRCS law, by implementing the following strategic goals:

1. Encouraging the voluntary investigation and cleanup under the VRCS program of properties with releases of hazardous substances;
2. Developing a partnership between EPA and DEQ to assure appropriate site cleanup; and
3. Providing necessary information to the people of Wyoming to clarify potential CERCLA liability and to allow for informed decision-making by property owners, prospective purchasers, lenders, public and private developers, citizens, communities, and elected officials.

In order to accomplish these goals, EPA intends to assist and support DEQ in developing and expanding the appropriate use of VRCS response activities. Similarly, DEQ intends to assist and support efforts to promote and implement EPA's "Brownfields" program. DEQ recognizes EPA as a key partner in the ongoing success of state cleanup programs, including the Wyoming VRCS program, and the role of EPA in support of the investigating, cleaning up, financing, transferring and redeveloping "Brownfields" sites.

III. Applicability

EPA understands and acknowledges that a wide range of potentially contaminated sites enjoy a statutory right to participate in the Wyoming VRCS program. Nothing in this MOA shall be read to alter, limit, or affect in any way the statutory eligibility of a potentially contaminated site to participate in the Wyoming VRCS program. Notwithstanding a site's

eligibility to participate in the Wyoming VRCS program, this MOA does not apply to any site which:

1. Has been listed on the CERCLA National Priorities List (NPL).
2. Has been proposed for listing on the NPL or a Hazard Ranking Package has been submitted to EPA Headquarters, unless EPA, after consultation with DEQ, has agreed to defer the site's listing on the NPL and the site meets the eligibility requirements of the Wyoming VRCS program;
3. Is the subject of a federal judicial or administrative order or enforcement action under federal environmental laws, or for which EPA has officially notified the DEQ of a pending action;
4. Is a "High Risk" site for which there is not agreement on coverage of the site under this MOA.

IV. Implementation

DEQ will be the lead and will oversee characterization and cleanup of sites participating in the VRCS program.

In implementing the VRCS at sites which may be covered by this MOA, DEQ and EPA agree that cleanup options which will allow unrestricted land use will be evaluated, regardless of whether cleanup options restricting land use are ultimately selected, and DEQ will develop guidance covering the proper implementation and maintenance of institutional controls. This guidance will also clarify responsibility for, and reporting on, effective maintenance of institutional controls.

DEQ will evaluate the information submitted by each applicant to the VRCS program to determine whether the site might be considered a "High risk" site. "High risk" sites are generally defined as sites where significant human exposure to hazardous substances has been documented or where sensitive environments have become contaminated. If DEQ believes a site to be "High risk", DEQ agrees to consult with EPA to determine if this MOA should cover that site. EPA agrees to promptly review all information regarding the site and identify whether EPA considers the site to be a "High risk" site. If EPA identifies a site as "High risk", EPA will consult with DEQ. Generally, EPA agrees to provide a timely written response to DEQ as to whether this MOA will apply to a "High risk" site. DEQ and EPA agree to work to resolve any disagreements over implementation of this MOA, including elevating disagreements to management when necessary.

In the circumstance where DEQ and EPA agree that a VRCS site is considered to be "High risk", and where EPA has determined that the site should not be covered under the provisions of this MOA, DEQ may proceed with a cleanup under the VRCS.

Nothing in this MOA shall be read to require pre-scoring of a potentially contaminated site to determine if it is a "High risk" site. EPA and DEQ agree that existing knowledge and information available to both agencies may be used to identify "High risk" sites requiring early consultation under this subsection.

DEQ agrees that it will carry out a program of field oversight of site response activities at sites participating in the Wyoming VRCS program. Any such field oversight program will be appropriate for the degree and complexity of the contamination present at an individual site and will confirm that the cleanup has occurred in conformance with the remedy agreement.

Once DEQ has determined a site is eligible for participation in the VRCS, EPA does not plan, nor anticipate taking removal or remedial action under CERCLA at sites covered by this MOA unless:

1. EPA, after consultation with DEQ, determines that there may be an imminent and substantial endangerment to public health, welfare, or the environment which is not being adequately addressed by DEQ. While EPA may make efforts to consult with DEQ, EPA need not consult with DEQ prior to taking a removal action where the release or threatened release of a hazardous substance or pollutant or contaminant presents an emergency situation; or
2. DEQ's approval of a preliminary remediation agreement, a remedy agreement or a reopened remedy agreement becomes void; or
3. The applicant fails to complete or materially comply with a preliminary remediation agreement, a remedy agreement or a reopened remedy agreement as approved by DEQ; or
4. There has been the submission of materially false or misleading information or the discovery of significant new information different than that submitted to DEQ.

V. Reporting

DEQ will notify EPA whenever a facility has applied to participate in the Wyoming VRCS program. Notification of EPA shall be via a carbon copy of the VRCS eligibility determination and will provide the name of the DEQ project manager for the facility. EPA may elect to consult with the DEQ project manager and to make reasonable requests for information in the possession of or available to DEQ concerning the facility. DEQ also agrees that EPA may

inspect DEQ site files to review information about any participating facilities. In any notification that DEQ makes to EPA under this subsection, DEQ will inform EPA if the site, in DEQ's judgement, should be considered a "High risk" site. For sites identified as potential "High risk" sites by DEQ, consultation with EPA shall be required prior to any presumption of coverage of this MOA to that site.

EPA agrees to promptly review any notification provided by DEQ under this subsection, and to promptly identify whether EPA considers a participating site to be a "High risk" site. Generally, EPA agrees to provide a response to DEQ within forty-five (45) days of its receipt of the notification from DEQ.

On an annual basis, DEQ will report to EPA on the following:

1. The identification of sites being addressed under the Wyoming VCRS law;
2. The identification of such sites where DEQ has issued a no further action letter;
3. The identification of such sites where DEQ has entered into a remedy agreement;
4. The identification of such sites where DEQ has issued a certificate of completion or covenant not to sue.

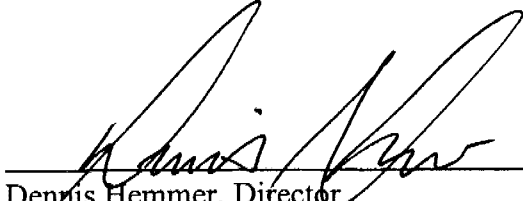
VI. Modification

EPA enters into this Memorandum of Agreement based upon a review of Wyoming's laws and regulations as they existed as of the date of this MOA. DEQ agrees to provide EPA with prompt notice of changes to such laws, regulations, and any guidance documents related thereto. This MOA may only be modified by mutual written agreement of the parties hereto, or it may be terminated by either party after providing thirty (30) day written notice to the other party.

VII. Reservation of Rights


Nothing in this MOA modifies EPA's or DEQ's responsibilities, obligations, or authorities under CERCLA or the VRCS law. EPA and DEQ reserve any and all rights or authority that they may respectively have, including but not limited to, legal, equitable, or administrative rights. Nothing in this MOA affects or limits EPA's or DEQ's authority or ability to take any response or enforcement action authorized by law.

This MOA is solely between EPA and DEQ, for the exclusive benefit of the working relationship between EPA and DEQ, and is not intended to be enforceable by any party in any administrative or judicial forum. Nothing herein is intended to create any rights, obligations, responsibilities, expectations or benefits in any third parties. This MOA does not authorize or assure funding for DEQ's VRCS program.



Dennis Hemmer, Director
Wyoming Department of Environment Quality

3-14-02
Date



Jack W. McGraw, Acting Regional Administrator
EPA Region VIII

3/11/02
Date